



# Sales Tax Newsletter

News and developments

A publication of the Tax Administration Division

Cory Fong  
Tax Commissioner

## MAY 2009 MONTHLY RETURNS DUE JUNE 22

At the end of each biennium, which is June 30 of odd numbered years, the May sales and use tax return due date is moved forward from June 30 to June 22. This means larger sales tax permit holders that are required to file monthly must file the May 2009 return by June 22, 2009. The due date for each return is displayed near the top of the form that is mailed to each permit holder or made available in WebFile. Please view your return before June 22 to verify if the early due date applies to you. May monthly sales and use tax returns will be mailed or made available in WebFile approximately June 1. The early due date applies only to May monthly returns of sales tax permit holders that are required to file monthly because the permit reported more than \$333,000 of taxable sales and purchases in the previous calendar year.

### Inside this issue:

- May 2009 Monthly Returns Due June 22 ..... 1
- Sales Tax Exemption for Natural Gas.... 1
- Amended Local Sales and Use Taxes .... 1
- Application of Local Use Taxes..... 2
- Sales Tax Seminars for Spring 2009..... 2
- Sales of Propane and Containers ..... 3
- Liability for Cigarette and Tobacco Wholesale Taxes ..... 4
- Taxpayer Assistance ..... 4

To be filed timely, paper returns must be postmarked by the US Postal Service by the due date and WebFile returns must be submitted on-line before midnight of the due date. Returns that are filed or paid after the due date are subject to penalty. ☺

## SALES TAX EXEMPTION FOR NATURAL GAS

Effective July 1, 2009, all sales of natural gas will be exempt from state and local sales taxes. This is the final step of a two phase approach to exempting natural gas from all sales and use taxes. The 2007 Legislative Assembly approved House Bill 1049, which reduced the sales tax rate on natural gas from 2 percent to 1 percent effective January 1, 2008 and created a complete exemption from tax effective July 1, 2009. ☺

## AMENDED LOCAL SALES AND USE TAXES

The Office of State Tax Commissioner administers all local sales, use and gross receipts taxes imposed in North Dakota. The following changes will become effective April 1, 2009.

The city of **Regent** has increased its local sales and gross receipts tax from 1 to 2 percent. In addition to the rate change, the city ordinance added a Use Tax and eliminated the maximum tax (refund cap). All other provisions of the ordinance remain the same effective April 1, 2009. See the article on *Application of Local Use Taxes* below for more information describing when a local use tax applies to a transaction.

The city of **Turtle Lake** has increased its local sales, use and gross receipts tax from 1 to 2 percent. In addition, the city ordinance raised the maximum tax to \$50.00 per transaction. All other provisions of the ordinance remain the same effective April 1, 2009.



Office of  
State Tax Commissioner  
600 E Blvd Ave, Dept 127  
Bismarck ND 58505-0599  
701.328.1246  
www.nd.gov/tax  
salestax@nd.gov  
www.nd.gov

*Local taxing jurisdictions in North Dakota always provide credit for tax paid to another local jurisdiction if the other jurisdiction reciprocates.*

The maximum tax amount (Refund Caps) allows purchasers to obtain a refund of local tax paid to the retailer in excess of the cap amount. When retailers collect local tax on the entire selling price and the local tax exceeds the refund cap, purchasers may apply to the Tax Commissioner for a refund or credit of the excess amount. Retailers may elect to collect the total tax amount or collect up to the cap amount, but must be consistent in the method they choose.

For a complete listing of all local taxes imposed in North Dakota, see our *Local Option Taxes by Location* guideline. The guideline is available on our website or by mail upon request. 

---

## **APPLICATION OF LOCAL USE TAXES**

Sales and use taxes are complementary. If a local taxing jurisdiction chooses to impose both a sales and a use tax, the rate is the same for both taxes and all exemptions that apply to sales tax must also apply to use tax.

A transaction may be subject to either sales or use tax, but not both. A local sales tax applies to taxable sales made by retailers located within a taxing jurisdiction when the customer takes possession of the goods within the same local jurisdiction. Local use tax applies to goods purchased from a retailer located outside of the taxing jurisdiction and the goods are delivered or brought into the jurisdiction for storage, use or consumption.

If a purchaser takes possession of goods in one taxing jurisdiction and moves the goods to a second jurisdiction that imposes a use tax, local use tax is due to the second jurisdiction if the tax rate in the second jurisdiction is greater than the rate paid where the purchase originally took place. Local taxing jurisdictions in North Dakota always provide credit for tax paid to another local jurisdiction if the other jurisdiction reciprocates.

To illustrate the application of a use tax on goods purchased in another taxing jurisdiction, assume Contractor A purchases \$1,000 of building materials in City A and pays 1 percent (\$10) of City A sales tax to the retailer. Contractor A then moves the materials to City B where the materials are used to construct a building. City B imposes a 1½ percent sales and use tax. Contractor A owes an additional \$5 of use tax to City B. Contractor A must calculate the additional city use tax due and report it on the Local Option Sales, Use, and Gross Receipts Taxes section of its North Dakota Sales and Use Tax Return. The additional \$5 tax due is calculated as ½ percent times the \$1,000 purchase price [(1½% tax in City B – 1% paid to City A) \* \$1,000 = \$5].

Local taxes apply where the purchaser takes possession of the goods. Retailers located within a taxing jurisdiction must collect that jurisdiction's local tax when the purchaser takes possession of the goods at the retailer's location or elsewhere within the taxing jurisdiction. The retailer must not collect the jurisdiction's local tax for goods delivered in the retailers own vehicles or by common carrier to the purchaser outside the taxing jurisdiction.

A retailer that delivers goods to another taxing jurisdiction must collect tax for the jurisdiction where the goods were delivered if the retailer has some type of physical presence within the jurisdiction where the goods are delivered. Examples of a physical presence by a retailer are: deliveries made in the retailer's vehicles; sales people, service staff, or other employees within the jurisdiction; the presence of contractors or agents; and, real estate, inventory or other property within the jurisdiction. 

---

## **SALES TAX SEMINARS FOR SPRING 2009**

The Office of State Tax Commissioner will present two sales tax seminars this spring with Revenue Department officials from Minnesota and South Dakota. The seminars will focus on the similarities and differences in each state's sales and use tax laws. If you transact business in North Dakota and in one or both of these adjoining states, these seminars will help you understand and comply with the laws in each state. There is no charge for the seminars, but please pre-register if you plan to attend because space is limited. The spring seminar schedule is as follows:

### **Minnesota/North Dakota Border Workshop, May 19, 2009:**

- Registration begins at 8:30 a.m.
- Sales tax seminar 9:00 a.m. – 12:30 p.m.
- Located in the lower level meeting room of West Acres Shopping Mall, Fargo, ND
- To register, call the Minnesota Department of Revenue at 651-297-4213 or the North Dakota Tax Commissioner's Office at 701-328-3475.

### **South Dakota/North Dakota Border Workshop, May 20, 2009:**

- Registration begins at 8:00 a.m.
- Sales tax seminar 8:30 a.m. – 12:00 p.m.
- Contractor's workshop 1:00 p.m. – 3:00 p.m.
- Located at Lake Area Technical Institute, Watertown, SD
- To register, go to [www.state.sd.us/revenue](http://www.state.sd.us/revenue), call the South Dakota Department of Revenue at 800-829-9188, or call the North Dakota Tax Commissioner's Office at 701-328-3475.

---

## **SALES OF PROPANE AND CONTAINERS**

Propane gas, also referred to as LP gas or liquefied petroleum gas, is subject to North Dakota's special fuels tax. Fuels subject to special fuels tax are exempt from sales tax. Propane storage tanks are subject to North Dakota and applicable local sales taxes when sold to a final user/consumer of the tank. The following describes how tax applies to sales of propane gas, propane tanks or a combination of these products.

- Fuel retailers that sell only containers of propane and sell no more than 1,000 gallons during a calendar month are not required to obtain a retail fuel license from the Tax Commissioner or collect special fuels tax. Instead, the retailer will pay the 2 percent special fuels tax to its distributor or supplier on the purchase price of the fuel.
- **Unlicensed retailers that sell propane should collect tax as follows:**
  - o Tank fill: When filling a customer's tank, tax (sales and special fuels) should not be charged to the customer. The charge is for the propane only and the applicable special fuels tax has been paid by the retailer.
  - o Tank exchange: Customer exchanges an empty propane tank for a filled propane tank and the retailer charges the same price to every customer. Tax (sales or special fuels) should not be charged to the customer. The charge is for the propane only and the applicable special fuels tax has been paid by the retailer.
  - o Tank exchange with substandard tank: Customer exchanges a tank that is not in good working condition or that does not meet current safety standards. The retailer charges the same price to each customer, but the price is greater than the straight tank exchange above. Part of this charge is for the tank and part of the charge is for propane. If the retailer separately identifies two charges, the charge for the tank is subject to sales tax and the charge for the propane is not subject to sales tax. If the retailer's charge is one lump-sum amount, the entire charge is subject to sales tax.
  - o Tank purchase with no exchange: Customer purchases a full tank of propane with no exchange. The retailer charges the same price to each customer but the price is greater than the tank exchange with substandard tank. Part of this charge is for the tank and part of the charge is for propane. If the retailer identifies two separate charges, the charge for the tank is subject to sales tax and the charge for the propane is not subject to sales tax. If the retailer's charge is one lump-sum amount, the entire charge is subject to sales tax.
- Fuel retailers are required to be licensed with the Tax Commissioner if they sell more than 1,000 gallons per month or if they sell propane for use in a licensed motor vehicle.
- **Retailers that hold a valid retail fuel license should collect tax as follows:**
  - o Retailers with a retail fuel license must collect special fuels tax on all sales of propane when filling a customer's tank or conducting a tank exchange.
  - o Tank exchange with substandard tank: Customer exchanges a tank that is not in good working condition or that does not meet current safety standards. The retailer charges the same price to each customer, but the price is greater than the straight tank exchange above. Part of this charge is for the

*Propane storage tanks are subject to North Dakota and applicable local sales taxes when sold to a final user/consumer of the tank.*

tank and part of the charge is for propane. If the retailer separately identifies two charges, the charge for the tank is subject to sales tax and the charge for the propane is subject to special fuels tax. If the retailer's charge is one lump-sum amount, the entire charge is subject to sales tax.

- o Tank purchase with no exchange: Customer purchases a full tank of propane with no exchange. The retailer charges the same price to each customer but the price is greater than the tank exchange with substandard tank. Part of this charge is for the tank and part of the charge is for propane. If the retailer identifies two separate charges, the charge for the tank is subject to sales tax and the charge for the propane is subject to special fuels tax. If the retailer's charge is one lump-sum amount, the entire charge is subject to sales tax.
- o Charges for purging a new propane tank are not subject to sales tax if separately stated from the selling price of propane or propane tanks. 

---

## LIABILITY FOR CIGARETTE AND TOBACCO WHOLESALE TAXES

Retailers and wholesalers that sell tobacco products, including cigarettes, snuff, chewing tobacco, cigars, and pipe tobacco are required to hold the appropriate retail or wholesale license issued by the North Dakota Office of Attorney General. All cigarette and tobacco products are subject to a wholesale cigarette or tobacco tax in addition to the sales tax collected on the retail selling price. Licensed wholesalers that sell cigarette and tobacco products to North Dakota retailers collect wholesale tax from retailers and report and remit the tax to the Tax Commissioner's Office.

A review by the Tax Commissioner's Office found some retailers have been purchasing tobacco products from vendors that are not licensed. Retailers that purchase tobacco products from vendors that are not licensed by the North Dakota Office of Attorney General are responsible to report and remit the wholesale tax due on these products. Retailers required to remit wholesale cigarette or tobacco taxes must contact the Office of State Tax Commissioner to register and make arrangements to file monthly 44CT Cigarette & Tobacco tax returns. For additional information, please call 701.328.1246 or e-mail [cig-tobaccotax@nd.gov](mailto:cig-tobaccotax@nd.gov). 

---

## TAXPAYER ASSISTANCE

If you have questions regarding sales tax or about correspondence received from our office, the following information will be helpful in ensuring that your call or visit to our office is completed in a speedy and efficient manner:

- For Streamlined Sales and Use Tax information and updates on our web site [www.nd.gov/tax](http://www.nd.gov/tax), click on *Sales and Use*, then click on *Streamlined Sales & Use* on the drop down list. The information includes up-to-date rate and boundary tables.
- If you have general sales tax questions, please call our Sales and Special Taxes Compliance Section at 701.328.1246.
- If calling our office about correspondence you have received, please call the number that is listed on the correspondence, and have a copy of the correspondence available when you call.
- When calling our office, please note the name of the person assisting with your question in the event you will have any follow-up questions later.
- Instead of calling or visiting our office, you may also e-mail us at [salestax@nd.gov](mailto:salestax@nd.gov). 



Office of  
State Tax Commissioner  
600 E Blvd Ave, Dept 127  
Bismarck ND 58505-0599  
701.328.3470  
[www.nd.gov/tax](http://www.nd.gov/tax)  
[salestax@nd.gov](mailto:salestax@nd.gov)  
[www.nd.gov](http://www.nd.gov)

*All cigarette and tobacco products are subject to a wholesale cigarette or tobacco tax in addition to the sales tax collected on the retail selling price.*